

Kerala Gazette No. 45 dated 11th November 2008.

PART I

Section iv



GOVERNMENT OF KERALA

Local Self Government (RD) Department

NOTIFICATION

G. O. (P) No. 131/2008/LSGD.

Dated, Thiruvananthapuram, 9th May 2008.

S.R.O.No.1149/2008.—In exercise of the powers conferred by sub- section (1) of section 565 of the Kerala Municipality Act, 1994 (20 of 1994), the Government of Kerala hereby make the following rules, namely:—

RULES

1. *Short title and commencement.*— (1) These rules may be called the Kerala Municipality (Conduct of Cases and Payment of Fees to Legal Advisors Engaged by the Councils) Rules, 2008.

(2) They shall come into force at once.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(a) “Act” means the Kerala Municipality Act, 1994 (20 of 1994);

(b) “Council” means the Council of a Town Panchayat, a Municipal Council or a Municipal Corporation constituted under sub-section (1) of section 4 of the Act;

(c) “Director” means the Director of Urban Affairs;

(d) “Municipality” means a Town Panchayat or a Municipal Council or a Municipal Corporation constituted under sub-section (1) of section 4 of the Act;

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(e) “Secretary” means the Secretary of a Municipality;

(f) Words and expressions used but not defined in these rules, but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. *Engaging Legal Advisors for the conduct of cases etc.*— (1) The Council may, for appearance on behalf of the Municipality and for the conduct of a case before any civil court or a criminal court or before the Ombudsman or the Tribunal for the Local Self Government Institutions or the Kerala Lok Ayukta or the High Court wherein the Municipality or representing the Municipality, the Chairman, Mayor or the Secretary, is a party, engage an Advocate considered to be qualified for the purpose.

(2) The responsibility of conducting more than one case of a Municipality may be entrusted with the same Advocate.

(3) Where, in case, the Government or an Officer representing the Government is a party along with the Municipality and where the interests of the Government and the Municipality are the same, the Municipality may, with the permission of Government, entrust the conduct of the case on behalf of the Municipality also with the same Advocate engaged for the Government, if the Council may deems fit.

(4) The Advocate for the Government shall undertake the conduct of a case in which an Officer whose services have been lent to the Municipality under section 227 and who is under the control of the Municipality is a party, as if it were for an Officer of the Government, unless any decision or orders or proceedings of the Municipality has been an issue under dispute therein.

(5) Where the Municipality, Chairman, Mayor or the Secretary considers that it is necessary to have the legal advice of an Advocate in any matter in respect of the administration of the Municipality or under section 545 of the Municipality Act, legal advice may be sought from a qualified and experienced Advocate after having the records thereof examined by him.

(6) In cases in respect of the land acquisition for Municipality, subject to the decision of the Council an Advocate who is experienced in conducting such cases may be engaged for conducting the case for Municipality.

4. *Appeal against judgments of lower courts.*— (1) In case a judgment not in favour of the Municipality has been passed in a case filed by or against the Municipality before any court or before any authority specified in rule 3(1), the Municipality shall, before filing appeal before the higher court against the judgment, seek the legal advice of the Advocate who had conducted the case for the Municipality before the lower court and that of the District Government Pleader.

(2) In case where it has been instructed to file appeal before the higher court under sub-rule (1), the same Advocate, who before the lower court, conducted on behalf of the Municipality, the case which gave rise to the cause for the appeal or any other Advocate considered to be qualified may be entrusted to file appeal and to conduct the case on behalf of the Municipality.

5. *Fee for Legal Advisors.*— (1) The Municipality may, at the rates specified below, give fee to the Advocates concerned, namely:—

(i) In civil cases, fee in accordance with law or for cases filed by the Municipality, fee at the rate fixed by the Municipality not exceeding rupees 2,500 (Two thousand and five hundred rupees) for each case and in cases filed against the Municipality, not exceeding rupees 2,000 (Two thousand rupees) for each case in which judgment is pronounced after taking evidence and not exceeding rupees 750 (Seven hundred and fifty rupees) for each case for appearance on behalf of the Municipality in cases which are compromised or withdrawn;

(ii) In criminal cases, for appearance in connection with the case in a court at the place where the Advocate practices, fee at the rate fixed by the Municipality not exceeding rupees 250 (Two hundred and fifty rupees) for each day of appearance occupying less than three hours and that not exceeding rupees 500 (Five hundred rupees) for each day of appearance occupying not less than three hours and that not less than rupees 500 (Five hundred rupees) and not exceeding rupees 1,000 (One thousand rupees) for appearance per day in a court at a place wherein the Advocate does not practice, considering the distance from the Head Quarters of the Municipality:

Provided that when an Advocate appears on behalf of the Municipality in more than one case on the same day before the same court or before different courts at the same place, the total fee payable for the day for his appearance in all the cases shall be at the rate fixed by the Municipality not exceeding rupees 1,000 (One thousand rupees):

Provided further that in a criminal case, the maximum fee including the sitting fee payable to an Advocate shall not exceed rupees 4,000 (Four thousand rupees);

(iii) Fee as fixed by the Municipality not exceeding rupees 500 (five hundred rupees) for every case of rendering legal advice on administrative matters after examining documents;

(iv) Fee that shall be payable to the District Government Pleader for rendering legal advice on every case in respect of appeals shall be as fixed by the Municipality not exceeding rupees 1,000 (One thousand rupees):

Provided that for rendering legal advice in respect of appeals, no separate fee shall be payable to the Advocate who conducted the case before the lower court;

(v) Fee as fixed by the Municipality not exceeding rupees 2,000 (Two thousand rupees) for conducting the case in appeal before the higher court against the judgment of the lower court;

(vi) Fee as fixed by the Municipality not exceeding rupees 5,000 (Five thousand rupees) in case dealt within sub-rule (6) of rule 3;

(vii) For conducting case before the High Court,—

(a) in cases filed by the Municipality not exceeding rupees 5,000 (Five thousand rupees) for each case;

(b) in cases filed against the Municipality, fee at the rate fixed by the Municipality not exceeding rupees 1,000 (One thousand rupees) for each case in which the Advocate appears on behalf of the Municipality and disposed of at the time of admission itself after preliminary hearing and not exceeding rupees 4,000 (Four thousand rupees) for each case in which counter affidavit has been filed and judgment is pronounced after final hearing and not exceeding rupees 1,000 (One thousand rupees) for each case which are compromised or withdrawn before filing counter affidavit and not exceeding rupees 1,500 (One thousand and five hundred rupees) for each case which are compromised or withdrawn after filing counter affidavit.

(2) Notwithstanding anything contained in sub-rule (1), fee as fixed by the Municipality in excess of the limit may be granted to the Advocate concerned subject to the prior approval of the Director of Urban Affairs in a case which involves complicated questions of law and where wide legal knowledge is necessary for the conduct of the case.

By order of the Governor,

S. M. VIJAYANAND,

Principal Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

Sub-section (1) of section 565 of the Kerala Municipality Act, 1994 (20 of 1994) empowers the Government to make rules. In the light of this provision Government propose to make rules in respect of engaging Advocates for the conduct of cases and for rendering legal advice to the Municipality and for payment of fees to them.

This notification is intended to achieve the above object.